1 In the Court of Claims.

WILLIAM W. SLAYMAKER
vs.
THE UNITED STATES. } No. 146-A.

I. Petition and amended petition.

On May 27, 1921, the plaintiff filed his original petition.

Subsequently, to wit, on January 3, 1922, by leave of court, the plaintiff filed his amended petition. Said amended petition is as follows:

II. Amended petition. Filed Jan. 3, 1922.

To the honorable, the Court of Claims:

The claimant respectfully represents:

I. The claimant was on or about May 26, 1917, during time of war enrolled as an officer in the U. S. Naval Reserve Force; was immediately ordered to active duty and reported for and entered upon active duty.

He was, shortly after being enrolled and reporting for active duty, paid the sum of $150 as gratuity for the purchase of uniforms.

II. On or about October 15, 1917, a commission as an officer of the Regular Navy of the United States was issued to him. He accepted the same and thereupon became an officer of the Regular Navy.

III. Soon after being so commissioned as an officer in the Regular Navy, the $150 uniform gratuity which had been credited and paid to him on being enrolled and reporting for duty in the Naval Reserve Force, was checked against his account and deducted from pay accruing to him as an officer of the Regular Navy, and has never been repaid or restored to him.

2 IV. The Comptroller of the Treasury subsequently held that the deductions in such cases were properly made and would not be restored to an officer from whose account it had been deducted, and after a decision by this court in several cases, holding the deduction to be improper and the officer entitled to have the amount thereof restored to him, the comptroller has reaffirmed said decision holding it to be a proper deduction, whereby it has become useless to present this claim to the accounting officers of the Treasury.

V. This claim is based upon and is made under the acts of August 29, 1916 (39 Stat. 589) and July 1, 1918 (40 Stat. 711), establishing a Naval Reserve, providing that all officers thereof reporting for active duty in time of war shall receive a uniform gratuity of $150, and prohibiting the checkage of uniform gratuity.

VI. No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of

this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims $150.

KING & KING,
Attorneys for Claimant.

3 DISTRICT OF COLUMBIA, *ss:*

George R. Shields being duly sworn deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge, information, and belief.

GEORGE R. SHIELDS.

Subscribed and sworn to before me this 31st day of December, 1921.

[SEAL.] MARIE A. SEARLES,
Notary Public.

III. General traverse.

No demurrer, plea, answer, counterclaim, set-off, claim of damage, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

IV. Argument and submission of case.

On May 15, 1922, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and by Mr. John G. Ewing, for the defendant.

4 *V. Findings of fact, conclusion of law, and opinion of the court, by Hay, J. Entered May 29, 1922.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The plaintiff, William W. Slaymaker, was enrolled May 26, 1917, as a chief machinist class 4, United States Naval Reserve Force, and on June 2, 1917, was placed on duty on board the U. S. S. "Juanita." June 26, 1917, he was promoted to ensign, class 4, Naval Reserve Force, and immediately ordered to the Naval Academy at Annapolis, Md., for duty under instruction. He there remained until Sep-

tember 14, 1917, when he was detached and ordered to duty on the U. S. S. "Ohio." October 15, 1917, he resigned from the United States Naval Reserve Force, and on the next day, October 16, 1917, accepted appointment and executed the oath of office as an ensign for temporary duty in the Regular Navy. June 1, 1918, he was promoted for temporary service to a lieutenant, junior grade, and September 21, 1918, was promoted to the temporary rank of lieutenant. He served on both sea and shore duty in the United States, with the destroyer forces at Queenstown, Ireland, and on the coast of France. May 29, 1919, he was detached and ordered home, and his resignation tendered in letter of January 7, 1919, was accepted to take effect upon arrival home, and became effective June 8, 1919.

September 8, 1919, he was again enrolled as a lieutenant, class 2, United States Naval Reserve Force, and October 1, 1920, accepted and executed oath of office as confirmed ensign, class 2, United States Naval Reserve Force.

The resignation above referred to is as follows:

U. S. S. "OHIO," *October 15, 1917.*

SIR: In accordance to the provision of Bureau of Navigation Circular Letter No. 2-17 (September 21, 1917), I hereby resign my enrollment as ensign in the United States Naval Reserve Force.

Respectfully,

W. W. SLAYMAKER,
Ensign, U. S. N. R. F.

COMMANDING OFFICER,
U. S. S. "Ohio."

5 [1st endorsement.]

U. S. S. "OHIO," *15 October, 1917.*

Accepted; and forwarded to the Secretary of the Navy (Bureau of Navigation).

R. W. MCNEELY,
Commander, U. S. Navy, Commanding.

The circular letter of the Bureau of Navigation referred to in this resignation is as follows:

SEPTEMBER 21, 1917, N/33 B/s.

Bureau of Navigation Circular Letter No. 2-17.

Subject: Change of status of certain reserve force officers to temporary ensign, U. S. Navy.

1. Enclosed is an appointment as temporary ensign in the U. S. Navy. Before this temporary appointment is accepted it will be necessary for the recipient to resign his enrollment as ensign in the U. S. Naval Reserve Force. The commanding officer is authorized to accept his resignation, forwarding two copies of the acceptance to the Bureau of Navigation for its files. Also close out and forward the service and health record.

2. The acceptance of resignation should bear the date, and be effective, preceding by one day, that of the acceptance of the temporary commission.

3. The officer concerned should be informed that at the conclusion of the war, when his temporary appointment will have expired, in accordance with the law, he will then immediately be eligible for enrollment in class 1, the fleet naval reserve of the Naval Reserve Force, with the rank he holds at that time.

4. The uniform gratuity of $150 which has been paid to reserve officers must be refunded if this temporary commission is accepted, since he is leaving the Reserve Force of his own volition and not by compulsion on the part of the Navy Department.

L. C. PALMER,
Chief of Bureau.

II.

There was credited and paid him as officer of the Naval Reserve Force the uniform gratuity of $150 provided by the act of August 29, 1916, 39 Stat. 587, 589.

Said uniform gratuity of $150 was checked against his account at some time between September 15, 1917, and September 24, 1917, and has never been restored to him.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover $150. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one hundred and fifty dollars ($150).

6 OPINION.

HAY, *Judge*, delivered the opinion of the court:

This case is similar to the case of Price *v.* United States reported in 55 C. Cls. 499.

In that case the court said: "The act of August 29, 1916, 39 Stat. 589, provides a gratuity for uniform to officers of the Naval Reserve Force. * * * There can be no doubt that he [the plaintiff] is entitled to the amount claimed unless he is to be deprived of it because of the provision in the act 'that should any member of the Naval Reserve Force sever his connection with the service without compulsion on the part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him.'"

So in the case at bar this plaintiff is entitled to the amount unless he is to be deprived of it by reason of the provision of the act above quoted.

Price was discharged from the United States Naval Reserve Force for the convenience of the Government, and this court held that

Price severed his connection with the service by reason of the order discharging him from the service, and that such severance from the service was not a voluntary one within the meaning of the act, and that therefore Price was entitled to the uniform gratuity.

In the case at bar the plaintiff Slaymaker resigned from the service by letter, and the Government therefore contends that his severance from the service was voluntary and came within the meaning of the act, and that he is therefore not entitled to the uniform gratuity.

The plaintiff was induced to write his letter of resignation under the following circumstances:

The plaintiff had been enrolled as an ensign in the Naval Reserve Force and was holding that office when there was issued from the Navy Department the circular letter which is set out in the findings, and in that letter the following occurs:

"Inclosed is an appointment as temporary ensign in the United States Navy. Before this temporary appointment is accepted it will be necessary for the recipient to resign his enrollment as ensign in the United States Naval Reserve Force." This was in effect to say to the plaintiff that unless he resigned his enrollment in the Naval Reserve Force he could not be appointed to the office of temporary ensign in the United States Navy. He was compelled to resign his enrollment before he could accept the office tendered him, and he therefore did resign his enrollment in the Naval Reserve Force and was on the next day after his resignation appointed a temporary ensign in the United States Navy. The circular letter also contained the following:

"The uniform gratuity of $150 which has been paid to reserve officers must be refunded if this temporary commission is accepted, since he is leaving the Reserve Force of his own volition and not by compulsion on the part of the Navy Department."

This circular letter is nothing more nor less than a threat that the plaintiff must give up his uniform gratuity or his appointment as temporary ensign in the United States Navy. We conclude that his severance from the service was not a voluntary one within the
7 meaning of the act. In fact, the plaintiff when he resigned his enrollment in the Naval Reserve Force did so merely as a formality and not for the purpose of leaving the service of the United States. He had no intention of leaving the service, and his resignation of his enrollment was but equivalent to the resignation which the law would have implied from his acceptance of the office of temporary ensign in the Navy. Price *v.* United States, supra; Reichman's case, 24 C. Cls. 485; Alger's case, 151 U. S. 362; and Hull's case, 38 C. Cls. 407.

That Congress intended that the uniform gratuity should not be taken from Naval Reserve officers is evidenced by the act of July 1, 1918, 40 Stat. 711, which provides: "That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts when said members accept or have

accepted temporary appointments in the Navy in time of war or other national emergency."

This act was passed after the date of the circular letter above cited, and after there had been deducted from the account of the plaintiff and others the clothing gratuity which had been credited to them. The act could have no other purpose than to prevent this deduction and to restore to those from whose accounts it had been deducted the uniform gratuity. The words in the act, "have accepted," could only relate to those officers who had accepted "temporary appointments in the Navy" and from whose accounts the clothing gratuity had been deducted. Congress had before it the action of the accounting officers of the Government whereby the act of August 29, 1916, was construed to mean that these deductions must be made when an officer of the Naval Reserve Force resigned his enrollment to accept a temporary appointment in the United States Navy. Having that decision before it, Congress passed the act of July 1, 1918, thereby construing the act of August 29, 1916, to mean that the acceptance of an appointment was not a voluntary severance from the service on the part of the officers. If the act of July 1, 1918, does not mean that it means nothing. While the general rule is that statutes shall not have a retroactive effect, yet when an act clearly intends to state the meaning of a former act, especially when doubt of its meaning had been raised, the act will be so construed as to give effect to the intent of Congress.

For the reasons above given the court is of opinion that the plaintiff is entitled to recover his uniform gratuity, amounting to the sum of $150.

It is so ordered.

GRAHAM, *Judge;* DOWNEY, *Judge;* BOOTH, *Judge,* and CAMPBELL, *Chief Justice,* concur.

8 *VI. Judgment.*

At a Court of Claims held in the city of Washington on the twenty-ninth day of May, A. D. 1922, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that William W. Slaymaker, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of one hundred and fifty dollars ($150).

By the COURT.

VII. Defendant's application for and allowance of an appeal to the Supreme Court.

From the judgment rendered in the above-entitled cause on the 29th day of May, 1922, in favor of the claimant, the defendant, by its Attorney General, on the 15th day of July, 1922, makes appli-

cation for, and gives notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

Filed July 15, 1922.

Ordered: That the above appeal be allowed as prayed for.

EDW. K. CAMPBELL,
Chief Justice.

July 21, 1922.

9 *Clerk's certificate.*

Court of Claims.

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusions of law, and opinion of the court by Hay, J.; of the judgment of the court; of the defendant's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this twenty-fifth day of July, A. D. 1922.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsed on cover:) File No. 29059. Court of Claims. Term No. 509. The United States, appellant, vs. William W. Slaymaker. Appeal from the Court of Claims. Filed July 29th, 1922. File No. 29059.

O

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 509.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM W. SLAYMAKER.

APPEAL FROM THE COURT OF CLAIMS.

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES, APPELLANT,
v.
WILLIAM W. SLAYMAKER.
No. 87.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF AND ARGUMENT FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is an action to recover one hundred and fifty dollars ($150) which was allowed as a gratuity to Slaymaker when he joined the Naval Reserve Force, but was deducted from his pay after he had resigned from that force and had joined the regular Navy.

The amount involved in this case is small, but it is a test case and the decision will affect a large group of cases in which similar claims have been made. Moreover, the question seems to involve the discipline of the Navy.

The facts with reference to Slaymaker's connection with the Naval Reserve Force and the regular Navy as found by the Court of Claims, are as follows: He was enrolled on May 26, 1917, as a chief machinist, class 4, Naval Reserve Force. On June 26, 1917, he

was promoted to ensign, class 4, and immediately ordered to the Naval Academy at Annapolis for duty under instruction, where he remained until September 14, 1917, when he was detached and ordered for duty on the U. S. S. *Ohio*. On October 15, 1917, he resigned from the Naval Reserve Force, and on the following day accepted an appointment and executed the oath of office as an ensign for temporary duty in the regular Navy. On June 1, 1918, he was appointed a lieutenant, junior grade, and on September 21, 1918, he was promoted to the temporary rank of lieutenant. He served with the destroyer forces at Queenstown, Ireland, and on the coast of France. On May 29, 1919, he was detached and ordered home. His resignation was tendered on January 7, 1919, was accepted to take effect upon arrival home, and became effective June 8, 1919. On September 8, 1919, he was again enrolled as a lieutenant, class 2, Naval Reserve Force. On October 1, 1920, he accepted and executed the oath of office as confirmed ensign, class 2, United States Naval Reserve Force. (R. pp. 2, 3.)

The court sets out the following correspondence which led up to Slaymaker's resignation from the Naval Reserve Force on October 15, 1917, and his acceptance of the office of ensign for temporary duty in the regular Navy.

Circular Letter No. 2–17 was sent out by the Bureau of Navigation, dated September 21, 1917, as follows (R. pp. 3, 4):

Subject: Change of status of certain reserve officers to temporary ensign, U. S. Navy.

1. Inclosed is an appointment as temporary ensign in the U. S. Navy. Before this temporary appointment is accepted it will be necessary for the recipient to resign his enrollment as ensign in the U. S. Naval Reserve Force. The commanding officer is authorized to accept his resignation, forwarding two copies of the acceptance to the Bureau of Navigation for its files. Also close out and forward the service and health record.

2. The acceptance of resignation should bear the date, and be effective, preceding by one day that of the acceptance of the temporary commission.

3. The officer concerned should be informed that at the conclusion of the war, when his temporary appointment will have expired in accordance with the law, he will then immediately be eligible for enrollment in class 1, the fleet naval reserve of the Naval Reserve Force, with the rank he holds at that time.

4. *The uniform gratuity of $150 which has been paid to reserve officers must be refunded if this temporary commission is accepted, since he is leaving the Reserve Force of his own volition and not by compulsion on the part of the Navy Department.*

(Italics ours.)

L. C. PALMER,
Chief of Bureau.

In compliance with this letter, Slaymaker sent to the proper authorities the following (R. p. 3):

U. S. S. "OHIO," *October 15, 1917.*

SIR: In accordance to the provisions of Bureau of Navigation Circular Letter No. 2–17 (September 21, 1917), I hereby resign my enrollment as ensign in the United States Naval Reserve Force.

Respectfully,

W. W. SLAYMAKER,
Ensign, U. S. N. R. F.

COMMANDING OFFICER,
U. S. S. "Ohio."

This resignation was indorsed as follows (R. p. 3):

U. S. S. "OHIO," *15 October, 1917.*

Accepted and forwarded to the Secretary of the Navy (Bureau of Navigation).

R. W. MCNEELY,
Commander, U. S. Navy, Commanding.

The court further found that, upon entering the Naval Reserve Force, there was credited and paid Slaymaker, as an officer, the uniform gratuity of $150 provided by the Act of August 29, 1916, 39 Stat. 587, 589, which gratuity was checked against his account some time between September 15, 1917, and September 24, 1917, and has never been restored to him.

Under these facts the court held that Slaymaker was entitled to recover the $150.

ARGUMENT.

I.

The court erred in finding for the plaintiff because, as Slaymaker's resignation was voluntary and not by compulsion, he was not entitled to retain the $150; and the accounting officer could not do otherwise than deduct it from his subsequent pay.

The paragraph of the Act of August 29, 1916 (39 Stat. c. 417, p. 589), under which the deduction was made, reads as follows:

> Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of $50 for officers and of $30 for men.
>
> Upon reporting for active service in time of war or national emergency the uniform gratuity shall be $150 for officers and $60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him.

The Court of Claims held that "this circular letter is nothing more nor less than a threat that the plaintiff must give up his uniform gratuity or his appointment as temporary ensign in the United States Navy"; and, therefore, "that his severance from the service

was not a voluntary one within the meaning of the act. In fact, the plaintiff when he resigned his enrollment in the Naval Reserve Force did so merely as a formality and not for the purpose of leaving the service of the United States. He had no intention of leaving the service, and his resignation of his enrollment was but equivalent to the resignation which the law would have implied from his acceptance of the office of temporary ensign in the Navy." (R. p. 5.)

We are unable to see any force in the illustration stated by the court. The Act of Congress created two distinct forces—one the Naval Reserve Force and the other the regular Navy. The same individual could not belong to both of these forces at the same time; and if he applied for and was given a commission in the regular service such action would work a severance from the reserve force, which would have been voluntary and "without compulsion on the part of the Government"; and, therefore, the provisions of the statute applied whether one formally resigned or his resignation was implied from his admission into the regular service. There certainly can be no valid claim that any kind of compulsion was brought to bear upon the plaintiff. He was in the Naval Reserve Force, and he had a perfect right to remain there if he so desired. If he preferred, and his services were acceptable to the Government, he could resign from that service and enter the regular service. No doubt his action was dictated by what he believed to be his best interest. He considered

the advantages, if any there were, in belonging to the regular service, and weighed against those advantages the return of the $150 gratuity, and decided that he would rather belong to the regular service though he had to refund the $150, and acted accordingly. At the time he had no thought of attempting to prevent a deduction of the gratuity, or of seeking to recover it, if deducted. If he did he was not acting in good faith, because he represented that he resigned "in accordance to the provisions of Bureau of Navigation Circular No. 2–17," which circular expressly required that the gratuity be deducted.

The court in its findings of fact says nothing about compulsion; and the statement that his resignation was not voluntary is a legal deduction not warranted by any fact found by the court. The very fact that in the circular letter, which was not directed to him specially but to all officers in the Naval Reserve Force, it was specifically stated that one would be required to refund the $150 if he resigned to accept a position in the regular service, conclusively refutes any possible inference of compulsion. If nothing had been said about such deduction and Slaymaker had resigned and accepted appointment in the regular service, and thereafter the deduction had been made, while there would be no justification of a finding of compulsion, yet it might have been inferred that Slaymaker had resigned from the reserve force and entered the regular force under a misapprehension as to the consequences of such resignation.

The only case cited by the court as authority, except three Court of Claims cases of similar character, is *United States* v. *Alger*, 151 U. S. 362. The facts in that case were that the plaintiff graduated from the Academy on June 22, 1882, was promoted to midshipman the same day, and was commissioned an ensign on June 26, 1884. He resigned November 10, 1890, his resignation to take effect the same day; and on the following day he was appointed professor of mathematics to rank from November 1. On the same day he accepted the appointment and took the required oath of office. The statute for longevity pay provided that the officers of the Navy should be credited with the actual time they had served as officers or enlisted men in the regular Volunteer Army or Navy, or both, and should receive the benefits of such active service in all respects in the same manner as if all such service had been continuous in the regular Navy "*in the lowest grade, having graduated pay, held by such officer since last entering the service.*" The plaintiff claimed that he was entitled to the longevity pay on the basis of a professor of mathematics, and not as an ensign, as he last entered the service as a professor of mathematics. The court disallowed the claim. The court defined the question to be "whether his actual service was for two distinct periods or for a single and continuous period of time," and expressed the opinion that "in substance and in law it was for one continuous period."

The vital distinction between that case and the present one is that in that case there was but one class of service. Alger was an ensign in the regular Navy, resigned, and became upon the following day a professor of mathematics in the regular Navy, his rank antedating some days his resignation. In the present case, as heretofore stated, there are two distinct classes of service; and the plaintiff resigned from the one, which was regulated by certain statutory provisions, and accepted service in the other, to which those provisions had no application whatever.

The following statutes also have a material bearing upon the question here presented. In the said Act of August 29, 1916, 39 Stat. c. 417, p. 587, it is provided:

> No person shall be appointed or commissioned as an officer in any rank in any class of the Naval Reserve Force, or promoted to a higher rank therein, unless he shall have been examined and recommended for such appointment, commission, or promotion by a board of three naval officers not below the rank of lieutenant commander nor until he shall have been found physically qualified by a board of medical officers to perform the duties required in time of war, except that former officers and midshipmen of the Navy, who shall have left the service under honorable conditions and who shall have enrolled in the Naval Reserve Force, may be appointed in the grade and rank last held by them without examination other than the physical examination above prescribed.

And further:

> All former officers of the United States naval service, including midshipmen, who have left that service under honorable conditions, and those citizens of the United States who have been, or may be entitled to be, honorably discharged from the naval service after not less than one four-year term of enlistment or after a term of enlistment during minority, and who shall have enrolled in the Naval Reserve Force, shall be eligible for membership in the Fleet Naval Reserve.

By the latter provision the plaintiff, after an honorable discharge from the regular service, was declared to be eligible for membership in the Fleet Naval Reserve, and, under the former provision, he was entitled to be appointed in the grade and rank last held by him without examination other than the physical examination.

Now, it was held by the Comptroller that one entitled under the above provisions to enrollment in the Naval Reserve, after being honorably discharged from the regular service, *was again entitled to the gratuity.* (See 25 Comp. Dec. 548; 26 Comp. Dec. 1010.) Therefore, when one resigned from the Naval Reserve Force for the purpose of accepting a commission in the regular service he paid for his own uniform, just as all others entering the service were required to do, and when, after discharge, he returned to the Reserve Force, he was again allowed his gratuity, just as everyone else entering such service was allowed. So, by requiring a deduction

of his gratuity at the time of his resignation to enter the regular service, he was placed on an exact footing with everybody else who entered that service and thereafter entered the Reserve Force.

II.

The court erred in holding that the Act of July 1, 1918, applies to this case.

The provision of that act relied upon reads as follows:

> That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergencies. (40 Stat. c. 114, p. 711.)

This act was passed nine months and a half after the deduction had actually been made from plaintiff's pay. It was passed in the midst of the war; and additional inducements were being offered to entice those belonging to the Reserve Force to resign and join the regular Navy. Congress was aware that the deductions mentioned had been uniformly made, and the fact that there was no reference to those that had already been made shows conclusively that it had no intention of making the act retroactive and applying it to those who had already been required to refund the gratuity. With reference to deductions the future tense alone was used, while with reference to those accepting appointments specific mention was made of those who had accepted, as well as those

who should thereafter accept, temporary appointments in the Navy.

A comparison of the Act of July 1, 1918, with previous statutes will show a number of provisions intended to induce enlistment in the regular Navy as well as in the Reserve Force. For instance, there was an appropriation for "outfits for all enlisted men and apprentice seamen of the Navy on first enlistment, at not to exceed $100" (40 Stat. p. 707), while theretofore the amount allowed was $60 (40 Stat. p. 486).

Nor was the above quoted provision intended to be a construction of the statute as it previously existed. If such had been the intention Congress would have expressed it in clear and unmistakable language. The enactment of the provision was a clear recognition of the validity of what had been done under the existing statute, but the custom of deducting the gratuity was prohibited in the future.

Schwab v. *Doyle*, 258 U. S. 529, 535, is in point. That case involved the construction of the "Estate Tax Act" of September 8, 1916 (39 Stat. 777, 780). That act imposed a tax upon the estate above a certain valuation of every decedent *dying after the passage of the act* "to the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death." Mrs. Dickel had made a transfer of valuable assets prior to the passage of this act, but died after its passage. After her death Congress reenacted the statute with an

additional clause specifically providing that the estate is liable for the tax whether the transfer be made before or after the passage of the act. The Government insisted that the case fell within any reasonable construction of the first statute, and that the second act was intended as a construction of its meaning and not an amendment. This court, however, took the contrary view, saying: "There is certainly in it no declaration of retroactivity, 'clear, strong, and imperative,' which is the condition expressed in *United States* v. *Heth*, 3 Cranch, 398, 413; also *United States* v. *Burr*, 159 U. S. 78"; and further held that the second act was an amendment of the first.

The general rule is thus stated: "It is a rule of construction that a statute is not to be construed to act retrospectively, or to affect rights vested prior to its passage, unless no other meaning can be given it, or unless the express or necessarily implied intention of the legislature can not be otherwise satisfied."

11 Ency. U. S. Sup. Ct. Rpts. p. 127.
See long list of cases there cited.

The judgment of the Court of Claims should therefore be reversed and the petition be dismissed.

JAMES M. BECK,
Solicitor General.

J. A. FOWLER,
Special Assistant to the Attorney General.

OCTOBER, 1923.

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Supreme Court of the United States.

October Term, 1923.

THE UNITED STATES, *Appellant*,
v.
WILLIAM W. SLAYMAKER. } No. 87.

BRIEF FOR APPELLEE.

I. STATEMENT OF THE CASE.

The Facts Found.

William W. Slaymaker filed his petition in the Court of Claims claiming a uniform gratuity of $150 as an officer of the United States Naval Reserve Force. That amount was paid him on enrollment as an officer in that force and on reporting for active duty in time of war, May 26, 1917. October 15, 1917, he resigned from the U. S. Naval Reserve Force and on the next day, October 16th, accepted appointment and executed the oath of office as an ensign for temporary duty in the regular Navy. His letter of resignation (rec. middle p. 3) refers to a circular letter of the Bureau of Navigation dated September 21, 1917 (rec. pp. 3, 4), stating that before a temporary appointment in the regular Navy is accepted it will be necessary for the recipient to resign his enrollment as ensign in the U. S. Naval Reserve Force, and that the acceptance of resignation should bear the date and be effective, preceding by one day,

that of the acceptance of the temporary commission. It concluded (near top p. 4):—

"4. The uniform gratuity of $150 which has been paid to reserve officers must be refunded if this temporary commission is accepted, since he is leaving the Reserve Force of his own volition and not by compulsion on the part of the Navy Department."

The uniform gratuity of $150 which had been paid him on enrollment and reporting for active duty was checked against his account at some time between September 15, 1917, and September 24, 1917, and has never been restored to him (Finding II, rec. p. 4).

Statutes.

The claim depends upon the following statutes:

Act of August 29, 1916, Chap. 417 (39 Stat. 556, 589):—

"Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of $50 for officers and $30 for men.

"Upon reporting for active duty in time of war or national emergency the uniform gratuity shall be $150 for officers and $60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him."

Act of July 1, 1918, Chap. 114 (40 Stat. 704, 711):—

"That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted

from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency."

Judgment and Appeal.

The Court of Claims gave judgment in favor of the claimant for the amount of the gratuity once paid and later deducted, $150. The opinion of the court was delivered by Judge Hay (rec. pp. 4–6), and is reported 57 C. Cls. 294.

The court therein referred to its previous decision in the *Price* case, 55 C. Cls. 499, from which no appeal was taken, and with which this case was held to be in all material respects identical in principle. From this judgment an appeal was taken by the United States (rec. pp. 6, 7).

II. BRIEF OF ARGUMENT.

This judgment is supported by both statutes considered by the court.

1. Act of August 29, 1916, Chap. 417 (39 Stat. 589).

This act provides that officers of the Naval Reserve Force upon reporting for active duty in time of war or other national emergency shall be credited with a uniform gratuity of $150, but with the proviso "that should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him."

The Government desired the services of this officer as a temporary ensign in the regular Navy. He was informed, however, that before accepting this temporary appointment he must resign as an ensign in the Naval

Reserve Force and that the acceptance of resignation should bear the date, and be effective, preceding by one day, that of the acceptance of the temporary commission.

His resignation, tendered and accepted October 15, 1917 (middle p. 3), refers to and complies with this offer of appointment in the regular Navy. Far from being tendered with any intention of leaving the service of the United States it was tendered for the purpose of making that service more effective by rendering it in the regular Navy, then greatly in need of a large number of qualified officers, made necessary by the constant call for a greater number of officers for the effective prosecution of the war.

This court had before it in *United States* v. *Alger*, 151 U. S. 362, 152 U. S. 384, official evidence of the practice of the Navy Department to require such a resignation of an officer from one branch of the Navy as preliminary to his transfer to another branch.

An official letter from a Chief of a Bureau of the Navy Department (152 U. S. 387, Note 4) said:

"The invariable practice of the Navy Department has been to regard transfer from one branch of the service to another as a reentry into the service, as is clearly shown by the department's requirement that officers should resign their commissions before being appointed to another corps," etc.

The Secretary of the Navy said in an official communication also quoted in that case (152 U. S. 390):

"It has been the invariable practice of the Navy Department to require officers serving in one branch of the naval service to resign from the navy before accepting appointment to any other branch of the service," etc. (Note about middle of page.)

This court in the original decision of the case, said in the opinion by Mr. Justice Gray (151 U. S. 365):—

"His express resignation of the lower office, the very day before his appointment to the higher office, and when he must have known of and counted upon the coming appointment, was evidently tendered with no intention of leaving the service, and was but equivalent to the resignation which the law would have implied from his acceptance of the higher office."

In the second opinion on petition for rehearing, also by Mr. Justice Gray, the court, taking notice of the practice of the Navy Department, said, 152 U. S. 384, 397:—

"But the habitual requirement of such a resignation by the Navy Department, as a preliminary to the new appointment puts beyond doubt (what was before in some degree a matter of inference from the specific facts found), that each resignation was tendered with no intention of leaving the service; and confirms us in the opinion heretofore announced, that the actual service of each claimant from the time he first entered the navy was for a single and continuous period, within the meaning of the longevity pay act."

The resignation in this case was, as in the *Alger* case, a mere step in the process of transfer from one branch of the service to another, and constituted in no proper sense of the term a severance of his connection with the service. Least of all was it a severance without compulsion on the part of the Government.

The Government was in need of his service. He would not have been commissioned ensign for temporary service in the regular Navy, had his services not been needed in that capacity. It was not a personal reward to him but an appointment to an office in which his services were desired by the Government. No distinction can be made between the case of an officer so

transferred from the Naval Reserve Force to the regular Navy with a resignation like this and a transfer without a formal resignation. According to the distinction which must necessarily be relied upon by the Government an officer who sent in his resignation in accordance with instructions from the Bureau of Navigation would be required to refund the uniform gratuity; while an officer discharged without such a resignation would be entitled to retain the money.

The fact that the Bureau of Navigation undertook in its circular to put a construction upon the law is of no consequence. The laws in regard to pay and allowances must be construed by reference to their own terms. Any attempt on the part of executive authority to bargain with officers as to their statutory pay and allowances has been uniformly condemned by this court.

In *Bancroft* v. *United States*, 56 C. Cls. 218, an officer enrolling in the Marine Corps Reserve, as to which the provisions are exactly similar to those of the Naval Reserve, was, as here, informed that he would not be entitled to any uniform gratuity. It was waived by him in a much more formal manner than in this case—by a written waiver stated to be a consideration conditional to his appointment. Yet the court held "that agreements to forego any part of a statutory compensation will not be enforced, and that recovery may be had for a withholding under such agreements" (56 C. Cls. 221, 222). A judgment in his favor for $150 uniform gratuity withheld was appealed by the United States to this court. So plain was the case that it was disposed of by this court without an opinion by the following order (260 U. S. 706):—

"Decided December 11, 1922. *Per Curiam.* Affirmed upon the authority of *Glavey* v. *United States*, 182

U. S. 595; *United States* v. *Andrews*, 240 U. S. 90, 94; *McMath* v. *United States*, 248 U. S. 151, 152."

The attempt by the Bureau of Navigation to deprive this officer of the allowance given him by law clearly comes within the principle thus so often decided by this court.

2. Act of July 1, 1918, Chap. 114 (40 Stat. 711).

This act provides: "That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency."

If any question as to the right of the appellee to retain this uniform gratuity under the act of 1916 could be made, it would be removed by this enactment. It was a clear and decisive legislative disapproval of the construction placed by the Comptroller on the act of August 29, 1916. The words "accept or have accepted" are conclusive as showing that the act was intended to be retroactive and to annul past deductions and disallowances of gratuities in all cases coming within its terms. The mere fortuitous circumstance whether a pay officer having charge of an officer's accounts happened to make a deduction before July 1, 1918, or postponed making it, can not operate to give or withhold the gratuity from the officer. The intent of Congress clearly was that acceptance of such an appointment, whether past or future, was not to be treated as a voluntary severance of connection with the service on the part of the officer.

The act of 1918 is probably no more than declaratory of the original intent of Congress in passing the act of 1916. Whether so or not, however, it was within the

power of Congress to annul by retroactive statute a construction placed upon the law by an executive officer of the Government and to restore to an officer what had been taken away from him on the strength of such a construction.

In *James* v. *United States*, 202 U. S. 401, the court in an opinion by Mr. Justice White, later Chief Justice, referred to a retroactive increase of salary as "a power which Congress undoubtedly possessed" (202 U. S. 406).

CONCLUSION.

The opinion of the Court of Claims in the *Price* case, to which the court referred as authority for the decision of this case is so much in point that it is hereto annexed as appendix A to this brief. A later decision in *Witt* v. *United States*, decided July 2, 1923 (58 C. Cls.) is also annexed as appendix B as a restatement in 1923 of the principles decided by that court in the *Price* case in 1920, in the *Bancroft* case in 1921 and in the present case in 1922.

Two grounds therein taken conclusively support this judgment:

1. The act of 1916 did not require the uniform gratuity to be deducted from the accounts of a Reserve officer transferred from the Naval Reserve Force to the regular Navy, such transfer not constituting a severance of his connection with the service without compulsion on the part of the Government.

2. The act of 1918 prohibited such deduction, and if the amount had already been checked required that it be restored.

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APPENDIX A.

[From 55 C. Cls. 499.]

Thomas Brooke Price v. *The United States.*

(No. 34439. Decided November 15, 1920.)

Naval Reserve Force; uniform gratuity.—Where an ensign in the Naval Reserve Force receives an order from the Navy Department stating, "You are this day discharged from the U. S. Naval Reserve Force for the convenience of the Government," and the next day accepts a commission as temporary ensign in the Regular Navy, his connection with the service was not severed within the meaning of the provisions of the act of August 29, 1916, 39 Stat. 589, directing the deduction of uniform gratuities of officers who have voluntarily severed their connection with said force.

Same.—The act of July 1, 1918, 40 Stat. 711, providing that clothing gratuity credited to members of the Naval Reserve Force shall not be deducted from their accounts where such members accept temporary appointment in the Regular Navy in time of war, does not prevent plaintiff from recovery where his account has already been checked by the accounting officers of the Treasury.

The following are the facts of the case as found by the court:

I. The plaintiff, Thomas Brooke Price, was enrolled in the United States Naval Reserve Force August 3, 1917, as seaman second class, at the Navy Yard, Washington, D. C. He was promoted to the rank of ensign October 5, 1917, while holding the rating of seaman second class and executed oath and acceptance of office of ensign in the Naval Coast Defense Reserve October 5, 1917. On the last-named date he was detached from the navy rifle range, fifth naval district, and ordered to Annapolis for special course of instruction. On January 15, 1918, he was detached from the Naval Academy and ordered to duty with destroyer forces abroad. On January 31, 1918, he was discharged from the Naval

Reserve Force "for the convenience of the Government," and temporarily appointed an ensign in the Regular Navy, to date from February 1, 1918. On February 1, 1918, he accepted the appointment and executed the oath of office of ensign. On September 6, 1918, he was temporarily appointed lieutenant, junior grade from July 1, 1918, which appointment he accepted on October 8, 1918, and executed the oath of office. He was ordered to duty and served on various vessels of the Navy. On April 22, 1919, he was detached and ordered to the third naval district for temporary duty on the receiving ship at New York. On May 26, 1919, he was detached from that duty and ordered home and his resignation, tendered in letter of November 23, 1918, was accepted, to take effect upon his arrival at home.

II. There was credited and paid him as an officer of the Naval Reserve Force the uniform gratuity of $150, provided by the act of August 29, 1916, 39 Stat. 587, 589.

After the order of January 31, 1918, which was addressed to Ensign Thomas B. Price, U. S. N. R. F., and stated "You are this day discharged from the U. S. Naval Reserve Force for the convenience of the Government," but prior to July 1, 1918, the $150 uniform gratuity was checked against plaintiff's account.

After July, 1, 1918, the amount was again credited to his account, and was subsequently the second time checked against his account.

He thereafter made claim to the Auditor for the Navy Department, his claim was disallowed, and the auditor's decision was affirmed by the Comptroller of the Treasury.

CAMPBELL, *Chief Justice*, delivered the opinion of the court.

The act of August 29, 1916, 39 Stat. 589, provides a gratuity for uniform to officers of the Naval Reserve Force, and this gratuity was credited to plaintiff, was afterwards checked against his account, was again credited, and again checked against his account, and he

now sues for it. There can be no doubt that he is entitled to the amount claimed unless he is to be deprived of it because of the provision in the act "that should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him."

The plaintiff had been enrolled as an ensign in the Naval Reserve Force and was holding that office when there was issued from the Navy Department an authorized order directed to him and stating "you are this day discharged from the U. S. Naval Reserve Force for the convenience of the Government." This order bears date January 31, 1918, and on the next day the plaintiff accepted a commission as temporary ensign in the Regular Navy. On July 1, 1918, he was commissioned a temporary lieutenant, junior grade and served as such generally on ship, until May 21, 1919, when his resignation from the service was accepted.

Explanatory of the order of January 31, 1918, it is stated by the Assistant Comptroller that the plaintiff was disenrolled from the Naval Reserve Force on January 31, 1918, "that he might be eligible to accept a commission as temporary ensign in the Regular Navy which commission he received and accepted on February 1, 1918."

It was held that plaintiff severed his connection with the service without compulsion on the part of the Government.

It is not necessary in this case that it be conceded that the severance of "connection with the service" mentioned in the act refers to the Naval Reserve Force alone and does not involve the broader service into which the plaintiff was promoted. Nor is it necessary to a decision that it be held that the plaintiff severed his connection with "the service." However, in *Reichman's Case*, 24 C. Cls. 485, the question arose as to whether the soldier had been "discharged from the service," and it was held that his connection with the Army was not

actually severed when his discharge was consequent to his promotion, and merely a formality in his promotion. And in *Alger's Case*, 151 U. S. 362, 365, where the question was whether the officer's "actual service was for two distinct periods, or for a single and continuous period of time," it was said:

"His express resignation of the lower office the very day before his appointment to the higher office, and when he must have known of and counted upon the coming appointment, was evidently tendered with no intention of leaving the service, and was but equivalent to the resignation which the law would have implied from his acceptance of the higher office."

See also *Hull Case*, 38 C. Cls. 407.

If it be said that the plaintiff's connection with the service was severed, it is manifest that the order of January 31, 1918, was effective for that purpose, and it does not appear otherwise how any severance was produced. The plaintiff had not then resigned, nor had he accepted the office to which he was appointed on February 1, 1918. If the order were not a mere formal one, made in contemplation of his promotion, it would be sufficient of itself to produce a severance from the service that was not a voluntary one within the meaning of the act in question.

The act of July 1, 1918, 40 Stat. 711, provides that the clothing gratuity credited to members of the Naval Reserve Force shall not be deducted from their accounts where such members accept, or have accepted, temporary appointment in the Navy in time of war, and this act would be sufficient to protect the plaintiff's account against checkage if it had not already occurred. See *In re Harold W. Brooks*, decided by the Comptroller January 31, 1920. But we are of opinion that the mere fact that the plaintiff's account had been checked should not deprive him of a right which would be accorded him if the account had not been checked.

Judgment in his favor will be granted for the uniform gratuity, and it is so ordered.

GRAHAM, *Judge;* HAY, *Judge;* DOWNEY, *Judge;* and BOOTH, *Judge*, concur.

APPENDIX B.

[Will appear in 58 C. Cls.]

COURT OF CLAIMS OF THE UNITED STATES.

No. C–64. (Decided July 2, 1923.)

SAMUEL B. WITT *v.* THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I. The plaintiff, Samuel B. Witt, was enrolled in the U. S. Marine Corps Reserve Force December 16, 1918, as second lieutenant, and reported for active duty on the same day. He was disenrolled from the Marine Corps Reserve Force March 12, 1919, in order to accept an appointment as temporary second lieutenant in the Marine Corps. He was appointed a temporary second lieutenant in the regular Marine Corps March 13, 1919 (a commission for which was transmitted to him and duly accepted), and was honorably discharged therefrom August 5, 1919.

II. Under date of December 15, 1918, the plaintiff executed an instrument as follows:

"In consideration of my enrollment as a second lieutenant, provisional, in class 4, Marine Corps Reserve, upon completing the course at the marine officers' training camp, thus enabling me to acquire the rank, pay, and allowances of an officer much sooner than if I were required to remain in an enlisted status until confirmed by the Senate and temporarily appointed a second lieutenant in the Marine Corps, I hereby waive all claim to clothing or uniform gratuity to which I may be entitled under existing or future laws or regulations by reason of enrollment in the reserve."

III. No uniform gratuity has been credited or paid to plaintiff on account of his enrollment in the Marine Corps Reserve Force. The amount so remaining unpaid is $150.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover $150.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one hundred and fifty dollars ($150).

MEMORANDUM.

This case is controlled by the cases of *Price* v. *The United States*, 55 C. Cls. 499, and *Bancroft* v. *The United States*, 56 C. Cls. 218, affirmed by the Supreme Court of the United States December 11, 1922.

The facts show that the plaintiff was disenrolled from the Marine Corps Reserve on March 12, 1919, in order to accept an appointment as temporary second lieutenant in the Marine Corps.

The primary purpose of the enrollment of the plaintiff in the Marine Corps Reserve, as stated in the opinion of the court in the *Bancroft case*, *supra*, was "to obviate this delay and give the Government the benefit of their immediate service as officers in the Marine Corps, incidentally giving to the men themselves the earlier advantages and pay of commissioned rank," and "the Commandant of the Marine Corps recommended to the Secretary of the Navy that immediately upon graduation they be enrolled in the Marine Corps Reserve and assigned to active duty, to be disenrolled therefrom when afterwards commissioned as temporary second lieutenants in the Marine Corps." The plaintiff was never out of the service (see *Price case*), and the disenrollment was merely a method of transfer from one status in the service to another. The enrollment of this man in the Marine Corps Reserve upon graduation was part of the policy and method adopted by the Government to utilize the services of these men as officers immediately upon the completion of the course at said

school during that period which would necessarily elapse before they could be confirmed by the Senate. The disenrollment in connection with temporary appointment as second lieutenant in the Marine Corps was merely a part of the routine in carrying out this policy and method, and was the act of the Government and not a voluntary severance in the true sense of that term by the plaintiff of his connection with the service. It is plain from the facts that he never left the service, but continued in it for the period of his enrollment until his honorable discharge on the 5th of August, 1919.

Judgment should be entered for the plaintiff in the sum of $150, and it is so ordered.